

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.

UD792/2009

against
Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr T. Gill
Dr. A. Clune

heard this claim at Ennis on 12th November 2009

Representation:

Claimant(s) : Mr. Tony Kenny, Branch Organiser, SIPTU, O'Connell Street,
Ennis, Co. Clare

Respondent(s) : Local Government Management Services Board, Olaf House,
35-37 Ushers Quay, Dublin 8

The determination of the Tribunal was as follows:-

Respondent's Case

The first witness gave evidence that he is a senior assistant chief fire officer with the respondent. He oversees the day to day operation of the fire service in the county concerned. He gave evidence that the claimant was initially employed under a permanent contract as a part time firefighter in a rural fire station on the 16 July 2007. A position arose in a busier urban fire station as a part time firefighter and the claimant filled this position on the 18 December 2007. This position was a temporary position and the claimant was made aware that had to relinquish his permanent contract at the rural fire station on taking up his new duties at the busier urban fire station. He was also made aware that his new contract was for a three monthly period and his employment may cease whenever the temporary contract expired. This three monthly contract was extended beyond the 17 March 2008 up to the 15 November 2008. The witness went on to give evidence that he received feedback from his station officer expressing general dissatisfaction with the claimant's work performance. He was also made aware from speaking to other fire officers that the claimant's

performance was unsatisfactory.

Under cross examination he confirmed that the claimant's dismissal was due to his unsatisfactory work performance. He was not capable of performing his duties to the required standard and he was not suited to the job. He confirmed that the claimant was made aware through his probationary reports that his performance was unacceptable but there was no willingness on the claimant's behalf to improve his performance. He confirmed that the respondent relied on these reports in arriving at the decision to dismiss the claimant. He also confirmed that a number of fire officers had concerns about the claimant's work performance when he worked at the rural fire station but no verbal or written warnings were issued to him.

In reply to questions from the Tribunal he confirmed that the completion of the probationary reports was a joint process and the claimant was at all times included in the process.

The next witness gave evidence that he is employed as a station officer at the urban fire station where the claimant was employed. He is also an instructor and has responsibility for training firefighters. He has been employed on a full-time basis since 2002 and has a wide knowledge of the level of training required. He gave evidence that system of probationary reports is a formal documented system. Over a period of time from 18 December 2007 to 17 September 2008 he completed three different probationary reviews with the claimant. The reviews were carried out in conjunction with the claimant. While the claimant was eager and had potential, his firemanship needed improvement, his skills level needed to improve and he had difficulty understanding the importance of taking instructions. His general overall performance was below the required standard.

The claimant acknowledged that his performance needed to improve after his first and second reviews and while there was some improvement, his performance had regressed by the time the third review was completed on the 30 September 2008. Following this review the witness wrote to his senior assistant chief fire officer on the 1 October 2008 with a recommendation that the claimant's employment not be extended beyond his contract date. His role in the process concluded at that point.

The next witness gave evidence that he is the Human Resources Officer with the respondent. He received correspondence from the Chief Fire Officer on the 6 October 2008 informing him of the claimant's work performance. Following receipt of this correspondence he wrote to the claimant on the 13 October 2008 informing him that he was in receipt of a recommendation not to renew or extend his contract of employment on the basis that his ability, work rate and attitude had been highly unsatisfactory. Accordingly he notified the claimant in this letter that his employment would terminate on the 15 November 2008.

Under cross examination he gave evidence that the respondent's disciplinary procedures were not invoked because the probationary reports and appraisals were relied upon. It is customary practice to rely upon performance appraisals. The claimant was working within his probationary period and that was the process that was followed. The disciplinary procedures were not used because the claimant was on probation. Due and fair process had been exercised and he, as a Human Resources Officer had relied upon the expertise of the technical people in reaching his decision to terminate the claimant's contract of employment.

Claimant's Case

The claimant gave direct evidence that he worked for the respondent for eighteen months. He was made aware by the respondent, when he moved from the rural fire station to the urban fire station that he was relinquishing a permanent contract for a temporary contract. He did so as his family were from the urban area and it was always his intention to return there. Following his probationary reports he informed his station officer that he would try and improve his work performance. He never received a verbal or written warning and was never given the opportunity to appeal the decision to dismiss him. He has not been in any employment since his dismissal and is attending college at present.

Under cross examination he confirmed that it was made clear to him that he was relinquishing a permanent contract for a three monthly temporary contract but it was a chance he was willing to take. He attended a number of probationary meetings with his station officer and understood exactly the issues raised in relation to his underperformance. Following his first and second reports he accepted that deficiencies in his work performance needed to be addressed but felt that he had achieved the required standard by the time the third probationary report had been completed.

Determination

Having considered the evidence of the claimant and respondent the Tribunal is unanimously of the view that the claimant has not identified any procedural defects in the termination of his employment with the Respondent County Council. The Tribunal in arriving at this conclusion would emphasise the overarching importance of the probationary process, and the inclusion of the claimant in the various stages of this process. It is beyond dispute that the claimant relinquished a permanent contract for a temporary contract and did so knowingly. The claimant was offered an opportunity of constructive engagement with his employers with a view to reaching the required standard for firefighters. The claimant failed to meet that standard. The position which the claimant had hoped to fill is a position that provides a vital public service and the respondent, as the statutory authority charged with the operation and supervision of such service, were entitled to decide within the context of the probationary period that the claimant could not be engaged as a full time firefighter. The tribunal cannot gainsay the decision of the respondent in this respect.

Accordingly the claimant's appeal fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)